

REMARKS

The Examiner is thanked for the careful review of this application.

Claims 1-3, 5, 6, and 8-21 are pending in the present application. Claims 1, 5, 8, 11, and 14-19 are independent claims. Favorable consideration of the subject claims is respectfully requested in view of the foregoing amendments and the following remarks.

Claim Rejection under 35 U.S.C. § 101

Claims 1-3, 5 6 and 8-21 remain rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

The Office had indicated that the rejection would be overcome if the method/process claims were tied to another statutory class of invention. The Applicants respectfully direct the Office to independent claims 1, 8, 16, and 18, which have been amended to recite that the respective methods are “performed by a processor at a communications device.” Accordingly, the method/process claims are now tied to another statutory class of invention, i.e., an apparatus, specifically a communications device. Accordingly, the Applicants respectfully request withdrawal of this rejection.

Claim Rejection under 35 U.S.C. § 103(a) over Del Sesto in view of Coyle

Claims 1-3, 5, 6 and 8-19 remain rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,985,882 (“Del Sesto”) in view of U.S. Patent No. 6,269,157 (“Coyle”).

Applicants’ Comments on the Office’s “Response to Arguments” Section of the 10/8/2008 Office Action

The Office persists in attempting to support the rationale for combining Del Sesto with Coyle in response to the Applicants’ arguments (e.g., see Response to Arguments section on Pages 2-3 of the 10/8/2008 Office Action). However, the Applicants respectfully submit that the Office has misinterpreted the Applicants’ previously filed remarks in the sense that the Applicants did not specifically argue against the motivation to combine Del Sesto and Coyle, but rather argued that the resultant combination would not be the Applicants’ claimed invention.

Accordingly, even assuming for the sake of argument that the Office is correct that one of ordinary skill in the art would be motivated to “modify Del Sesto’s to incorporate the feature taught by Coyle above, which can obtain the predictable result that the media buyers can be media resellers to resell the advertising time or advertising space to their clients,” the combination of Del Sesto and Coyle would still not anticipate the claimed invention and/or render the claimed invention as obvious. The Applicants’ argument (which has been reproduced and reinforced in the Applicants’ remarks below) does not attack the references individually, nor is the Applicants’ argument based upon Del Sesto and Coyle being non-analogous art. Accordingly, the Applicants respectfully submit that the Office’s Response to Arguments section provided on Pages 2-3 of the 10/8/2008 Office Action does not truly address the Applicants’ arguments that the combination of Del Sesto and Coyle remains deficient in anticipating and/or rendering the claimed invention as obvious.

Discussion of how the Office is interpreting Del Sesto

The Del Sesto reference is directed to a negotiation between a product developer/seller and an advertiser related to the price the product seller must pay to the advertiser for a given amount of advertising units. When the product developer/seller and advertiser can agree upon the price, the advertiser allocates the agreed-upon amount of advertising units to the product seller for advertising its products.

With regard to the claim language of “*receiving a first data associated with each of the one or more products from a first delivery entity*” and “*offering at least one of the one or more products to clients of the first of the multiple provider entities, wherein the clients of the first of the multiple provider entities are capable of purchasing the at least one of the one or more products according to the first modification of the first data,*” the Office reads the claimed “first delivery entity” upon the media sellers in Del Sesto, and the claimed “multiple provider entities” upon the media buyers in Del Sesto (e.g., see Pages 5-6 of the 10/8/2008 Office Action). In Del Sesto, ‘media sellers’ are entities that sell advertising space, whereas ‘media buyers’ are entities that desire to purchase advertising space. Finally, the “clients of the first of the multiple provider entities” is being read upon viewers of advertisements purchased by the media buyers and distributed by the media sellers (e.g., see Page 6 of the 10/8/2008 Office Action).

Accordingly, the advertisements in Del Sesto are purchased by media buyers for an agreed-upon price (upon which the Office reads the “first modification”), and the media seller distribute the advertisements, which advertise products or services to one or more viewers. *Clearly, in Del Sesto, the viewers to the advertisements do not purchase any advertised products or services based on the cost of the actual advertisement, but rather based on the price of the products/services in the advertisement.* The Office acknowledges this deficiency on Page 6 of the 10/8/2008 Office Action, and indicates that Coyle cures this particular deficiency of Coyle.

Coyle discloses that a moderator can control bidding, between different carriers, of switches and data routes that connect carriers to their customers (*See* Column 7, lines 29-44 of Coyle). The carriers can adjust their bids when they want to encourage or discourage traffic on certain routes. The Office has cited to Coyle at Column 15, lines 13-40, which discusses that end users (e.g., calling parties) are not necessarily bound by the bidding process, but rather can obtain the lower of the lowest bid price and a pre-negotiated contract price with their primary carrier (e.g., *see* Page 6 of the 10/8/2008 Office Action). Thus, end-users are not necessarily locked into their contract prices, but could receive services at lower costs via the auction.

In the asserted combination of Del Sesto and Coyle, the Office alleges that “*wherein the clients of the first of the multiple provider entities are capable of purchasing the at least one of the one or more products according to the first modification of the first data,*” feature as recited in independent claim 1, is present within Coyle, as Coyle discloses that end-users can bid on rates for telecommunication service.

The Applicants respectfully submit that the manner in which the Office asserts Del Sesto and Coyle is contradictory. As noted earlier, the Office reads the claimed “first modification” upon a counter-offer during a negotiation for advertising space between media buyers and media sellers in Del Sesto, and the Office reads the claimed “wherein the clients of the first of the multiple provider entities are capable of purchasing the at least one of the one or more products according to the first modification of the first data” upon Coyle at the end-user bidding for telecommunication service (Emphasis added). ***However, the end-user bidding is entirely unrelated to negotiations between media buyers and sellers for advertising space.*** Thus, it is unclear how Coyle can be combined with Del Sesto such that “clients of the first of

the multiple provider entities are capable of purchasing the at least one of the one or more products according to the first modification of the first data,” as claimed (Emphasis added).

It is respectfully requested that the Office must read the claim language consistently, or else must withdraw the rejection. As it presently stands, the combination of Del Sesto and Coyle fails to disclose or suggest “wherein the clients of the first of the multiple provider entities are capable of purchasing the at least one of the one or more products according to the first modification of the first data,” as recited in claim 1 **because (i) the cost of advertisements to an advertiser has no reasonable relation to the price of the advertised products for which viewers can make purchases, and (ii) Coyle’s disclosure of end-user bidding is unrelated to the cost of any advertisement, which is what the Office reads the “first modification” upon in this rejection.** For similar reasons, the Applicants respectfully submit that independent claims 5, 8, 11, and 14-21 are also allowable.

As such, claims 2-3, 6, 9-10, 12-13 and 20-21, dependent upon independent claims 1, 5, 8 and 11, respectively, are likewise allowable over Del Sesto in view of Coyle at least for the reasons given previously with respect to independent claims 1, 5, 8, and 11, respectively.

Accordingly, the Applicants respectfully request that the Office withdraw this art grounds of rejection, and further requests issuance for the present application at least for the reasons expressed above.

Reconsideration and issuance of the present application is respectfully requested.

CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated January 5, 2009

By: /Fariba Yadegar-Bandari/
Fariba Yadegar-Bandari
Reg. No. 53,805
(858) 651-0397

QUALCOMM Incorporated
Attn: Patent Department
5775 Morehouse Drive
San Diego, California 92121-1714
Telephone: (858) 658-5787
Facsimile: (858) 658-2502